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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10
11 LEWIS D. CHRISTOPHERSON,
12 Plaintiff,

13 v.

14 CAROLYN W. COLVIN, Acting Commissioner
15 of Social Security,
16 Defendant.

Case No. 3:13-CV-00114-MMD-VPC

17 **DEFENDANT'S APPLICATION FOR STAY**
18 **DURING LAPSE IN APPROPRIATIONS**

19 Defendant Carolyn Colvin, Acting Commissioner of Social Security, requests the Court to stay
20 proceedings in this matter during the period of lapse in appropriations for the United States
21 Department of Justice and the Federal Defendant.

22 At midnight on September 30, 2013, the continuing resolution that was funding the Department
23 of Justice and appropriations to the Department lapsed. The same is true for most Executive Branch
24 agencies, including the Federal Defendant involved in this case. The date when funding will be
25 restored by Congress has not been established.

26 The Anti-deficiency Act, 31 U.S.C. §1341, as construed by the Attorney General, provides that
27 in the absence of appropriated funds no obligation can be incurred except for the protection of life and
28 property, the orderly suspension of operations, or as otherwise authorized by law. This means that

absent an appropriation, Department of Justice attorneys and employees of the Federal Defendant's agencies are prohibited from working, even on a volunteer basis, "except for emergencies involving the safety of human life or the protection of property." 31 U.S.C. §1342. Accordingly, each U.S. Attorney has been instructed to designate those attorneys and support staff whose work is necessary to sustain legal operations essential to the safety of human life and the protection of property. The Department of Justice has issued guidance which gives priority to continuing work on criminal cases. Consequently, only a very few employees in the Civil Division of the United States Attorney's Office for the District of Nevada will be authorized to work during a lapse in appropriations – the rest will be furloughed.

The agency attorneys assigned to handle Social Security appeals, who participate in all aspects of the preparation and filing of pleadings in Social Security appeals cases, have also been furloughed for the duration of the lapse in appropriations. The need for the relief of a stay is urgent because of the following impending deadline(s):

<u>Item</u>	<u>Due Date</u>
Defendant's response to motion for remand	October 15, 2013

Therefore, the undersigned counsel requests a stay of this matter until Congress has restored appropriations and the assigned attorneys are permitted to resume work on this case.

Denial of a stay in this matter would be prejudicial to the interests of the United States. Appeals such as this one require familiarity with the administrative record and with the procedures applicable to Social Security disability benefits determinations. The Government does not have civil attorneys available to become conversant with this entire case in the short time available to complete the above-described filing, nor could an attorney adequately present the position of the United States on that matter due to the lack of familiarity with the case and its issues. Plaintiff will not be prejudiced by the proposed delay because the delay is not anticipated to significantly alter the course of resolution of this matter. Plaintiff's counsel (Mr. Marc Kalagian) has been contacted and does not oppose the stay.

If this motion for a stay is granted, undersigned counsel will notify the Court as soon as Congress has appropriated funds. It is requested that, at that time, all current deadlines for the parties

1 be extended commensurate with the duration of the lapse in appropriations. A form of order is
2 attached.

3 Dated this 4th day of October, 2013.

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5 DANIEL G. BOGDEN
6 United States Attorney

7 /s/ Greg Addington
8 GREG ADDINGTON
9 Assistant United States Attorney

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13 IT IS SO ORDERED
14 Valerie O. Probst
15 U.S. MAGISTRATE JUDGE
16 DATED October 7, 2013
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PROOF OF SERVICE

I, Greg Addington, certify that the following individual was served with a copy of the foregoing document, on the date shown, by the below identified method of service:

CM/ECF:

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Dated: October 4, 2013

/s/ Greg Addington
GREG ADDINGTON
Assistant United States Attorney

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LEWIS D. CHRISTOPHERSON,
Plaintiff,

v.

CAROLYN W. COLVIN, Acting Commissioner
of Social Security,
Defendant.

Case No. 3:13-CV-00114-MMD-VPC

ORDER FOR STAY OF PROCEEDINGS
DURING LAPSE IN APPROPRIATIONS

1. The Court has been advised that at midnight on September 30, 2013, the continuing resolution that was funding the Department of Justice expired and the appropriation of funds to the Department lapsed. The same is true for most Executive Branch agencies, including the federal agencies involved in litigation in this District.

2. Absent an appropriation, Department of Justice attorneys and employees of the federal agencies are prohibited from working, even on a volunteer basis, "except for emergencies involving the safety of human life or the protection of property." 31 U.S.C. § 1342. Civil cases are not deemed to be within this exemption.

3. The Court has been informed that the lapse in appropriations therefore prevents Department of Justice attorneys and their federal agency counterparts from appearing at hearings and depositions and performing work necessary to meet case deadlines, including those imposed by statute, the Federal Rules of Civil Procedure, the Civil Local Rules of this District, and by case management orders issued in individual cases. This situation will cause prejudice to the interests of the United States and the federal agencies, officers, and employees involved in civil litigation in this District.

1 WHEREFORE, the Court finds that good cause exists to stay proceedings in this case until
2 Congress has restored appropriations.

3 IT IS THEREFORE ORDERED that all time limits and deadlines in this case are extended for
4 a period of time equal to the duration of the lapse in appropriations to the Department of Justice and
5 the Federal Defendant and depositions and court hearings are vacated. Further, this stay does not
6 apply to applications for emergency relief.

7 This Order shall apply nunc pro tunc to October 1, 2013.

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10 DATED: October ____, 2013

11 MIRANDA M. DU
12 United States District Judge
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